



# *COMMONWEALTH of VIRGINIA*

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COMMISSIONER

*DEPARTMENT OF  
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Dear Individual Receiving ID, DS or DD Waiver Services and/or Family Member:

The purpose of this letter is to provide you with information about the Centers for Medicare and Medicaid Services (CMS) Home and Community Based Services (HCBS) Settings Regulation (sometimes known as “the final rule”). The intent of the regulation, which went into effect March 17, 2014, is to ensure that individuals receiving waiver services have **full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate**. In this context, the “setting” refers not to residential services under the waiver, but waiver services provided to individuals in a specific physical location. This federal regulation affects all waivers operated in Virginia. CMS has given all states five years to come into compliance with all of its elements (deadline of March 17, 2019).

The key elements of the settings regulation for all waiver providers are that they:

- Are integrated in and support access to the greater community
- Provide opportunities for individuals to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Ensure that individuals receive services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services.
- Ensure an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint.
- Support individual initiative, autonomy, and independence in making life choices.
- Help all individuals have choice about their services & supports and who provides them.

The regulation also requires that ALL waiver funded settings are chosen by the individual from among multiple setting options, including non-disability specific settings, and that those receiving residential services through the waiver have an option for a private unit in a residential setting.

Finally, for residential settings that are “provider-owned or controlled” (includes group homes, sponsored residential homes, apartments owned or rented by a provider), the following are required:

- The individual has a lease or similar legally enforceable agreement that gives him/her the same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity
- Each individual has privacy in his/her sleeping or living unit
- Sleeping or living units have lockable entrance doors, with the individual and appropriate staff having keys to doors as needed
- Individuals sharing units have a choice of roommates
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement
- Individuals have freedom and support to control their schedules and activities and have access to food at any time
- Individuals may have visitors at any time
- The setting is physically accessible to the individual.

If an individual requires **restrictions** on any of the above residential requirements because of his/her specific circumstances, the following must be in place:

- Modifications to the requirements must be:
  - Supported by specific assessed need for that individual
  - Justified in the person-centered service plan (PCP)
  - Documented in the person-centered service plan
- Documentation in the PCP of modifications must include:
  - Specific individualized assessed need
  - Prior interventions and supports including less intrusive methods
  - Description of condition proportionate to assessed need
  - Ongoing data measuring effectiveness of modification
  - Established time limits for periodic review of modifications
  - Individual's informed consent
  - Assurance that interventions and supports will not cause harm.

The regulation states that some settings in which individuals have been receiving waiver services are presumed NOT to be Home and Community Based (i.e., do not meet criteria to continue to receive waiver funding):

- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings on grounds of, or adjacent to, a public institution

- Settings with the effect of **isolating** individuals from the broader community of individuals not receiving Medicaid HCBS.

Settings that isolate may have any of the following characteristics:

- Designed to provide people with disabilities multiple types of services and activities on one site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities
- People in the setting have limited, if any, interaction with the broader community
- Uses/authorizes interventions/restrictions that are used in institutional settings (e.g., seclusion).
  - Examples of settings that have the effect of isolating individuals:
    - Farmstead or disability-specific farm community
    - Gate/secured “community” for people with disabilities
    - Residential schools
    - Multiple settings co-located and operationally related (i.e., numerous group homes co-located on a single site or multiple units on the same street).

In order to help providers make the changes needed to follow the elements of the settings regulation, DBHDS and DMAS came up with a “transition plan.” This was also required by CMS in the regulation. The full statewide transition plan can be viewed at:

[http://www.dmas.virginia.gov/Content\\_attachments/lrc/Virginia%20Statewide%20Transition%20Plan%20CMS%203%2017%202015.pdf](http://www.dmas.virginia.gov/Content_attachments/lrc/Virginia%20Statewide%20Transition%20Plan%20CMS%203%2017%202015.pdf).

For the ID/DD waivers, the process of coming into compliance has involved providers completing a self assessment and DBHDS Office of Licensing staff verifying the results of this self assessment. Those providers who are not fully compliant at this time will receive technical assistance from other DBHDS staff to help them move toward reaching that goal. Providers not currently meeting the settings requirements will be asked to regularly report on the status of their compliance with the requirements through the completion of follow-up self-assessments. It is our hope that all current ID/DD waiver providers are fully compliant by June of 2018; however, those provider agencies that are not will receive a letter notifying them that they will likely forfeit their Medicaid Waiver provider status and be disenrolled by March of 2019. At that time, individuals receiving services from those providers will need to either choose a provider that is compliant, or pay for their services from that provider through some means other than waiver.

We welcome input from the public on how providers are doing in terms of progressing toward meeting all the elements of the settings regulation.

Please submit feedback, and/or questions about the regulation to:

[HCBSComments@dmas.virginia.gov](mailto:HCBSComments@dmas.virginia.gov) OR [MyLifeMyCommunity@dbhds.virginia.gov](mailto:MyLifeMyCommunity@dbhds.virginia.gov).

If you have specific questions or concerns about provider compliance, you may call and leave a recorded message at the following:

**In Richmond: 804-774-4474**  
**Toll Free: 844-419-1575**

Additional information and resources about the HCBS regulation and statewide monitoring of compliance can be found on the DMAS website at:

[http://www.dmas.virginia.gov/Content\\_pgs/HCBS.aspx](http://www.dmas.virginia.gov/Content_pgs/HCBS.aspx)

If you have questions, I encourage you to have conversations with your case manager/support coordinator about the settings regulation and what it means for you.

Sincerely,

Dawn Traver, M.Ed.  
Director, Waiver Operations